NO. 11-A-520

IN THE
SUPREME COURT OF THE UNITED STATES

RICK PERRY, in his official capacity as Governor of Texas,
HOPE Andrade, in her official capacity as Secretary of State,
and the STATE OF TEXAS,

Applicants,

v.

SHANNON PEREZ, *et al.*,

Respondents.

On Appeal from the United States District Court
for the Western District of Texas

**THE TEXAS DEMOCRATIC PARTY
AND BOYD RICHIE'S
CONSOLIDATED RESPONSE TO EMERGENCY APPLICATIONS
FOR STAY OF INTERLOCUTORY ORDERS**

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RESPONDENTS', TEXAS DEMOCRATIC PARTY AND BOYD RICHIE IN HIS CAPACITY AS CHAIR OF THE TEXAS DEMOCRATIC PARTY, RESPONSE TO EMERGENCY APPLICATION FOR STAY OF INTERLOCUTORY ORDER

TO THE HONORABLE ANTONIN SCALIA, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Texas' "election machinery is already in progress" and despite that circumstance, the Applicant, State of Texas, requests this Court grant it the extraordinary relief of a stay concerning the thoughtful and extensive work undertaken by the three-judge district court in this case. *See Reynolds v. Sims*, 377 U.S. 533, 585 (1964). At present, TDP and its

most populous county parties have received 61 applications for a place on the ballot for State House, State Senate and Congress combined.[1] Appendix Exhibit 1. Many counties have begun the process of finalizing voting precincts so that they can be submitted for preclearance. *Id.* Petition gathering and campaigning is well underway.[2] *Id.* Essentially the State requests this Court enter an injunction of the ongoing election.[3] The Texas Democratic Party and Boyd Richie, its elected Chairman, hereby offer this response in opposition to the state's three applications for stay.[4]

Despite having delayed its activities in virtually every step of the latest redistricting cycle, the State pleads for an extraordinary stay. The State requests the Court delay the election schedule, already delayed by the district court to the extent possible, so as to permit a review of the legal issues in this case. Recognizing that review of the substantial legal issues considered by the district court will take more time than is available under the present schedule, the State asks the Court to move its primary election to May with respect to only those races in dispute in this litigation. House Application at

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[1] These totals are current as of 6:00 p.m., November 30, 2011. More detail on the filings and references to updated website listings for both major political parties are included in the Appendix Exhibit 1.

[2] Some candidates in Texas are required to obtain citizen petitions in order to secure a place on the ballot while others may pay a filing fee in lieu of petitions. TEX. ELEC. CODE § 141.061, *et seq.* All must be submitted within the filing period. *Id.*

[3] Requests for injunctions to this Court, even when made as a stay application, must meet a heightened burden of proof over and above a stay application in order to be granted. *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312 (1986) (Scalia, J.), (Finding a stay request that amounts to a request for an injunction falls under different rules (e.g., the All Writs Act and Supreme Court Rule 44) and "demands a significantly higher justification" than under the stay statute, 28 USC sec. 2101(f).) *Id* at 1313.

[4] TDP's interest is in avoiding the considerable expense, disruption and voter confusion certain to occur if the stay applications are granted. TDP was awarded no relief by the district court. TDP had asserted a political gerrymander claim that the district court refused to grant relief upon. TDP leaves it to the other litigants to argue the merits of the district court's order.

p. 24-25. Without evidence, the State argues there will be "minimal disruption to the state's electoral infrastructure." For the reasons below, and including the attached evidence, delay of the election any further will result in a massive disruption of this state's electoral infrastructure and therefore the State has failed to meet its burden entitling it to this extraordinary relief. The Applications for Stay should be accordingly denied.

STATEMENT

In Texas, the political parties administer the primary election. TEX. ELEC. CODE § 172.001, *et seq*. The primary election is scheduled, according to state law, for March 6, 2012. TEX. ELEC. CODE § 41.007(a), (c). In order to prepare for the primary election, there are numerous, systematic deadlines that must be met by the statewide political parties, the county political parties, cities, counties, and enumerable local governments.[5] Recognizing these looming deadlines, the three-judge district court administered its proceedings with the utmost haste. The district court held a two-week evidentiary hearing concerning Plaintiffs' claims under § 2 of the Voting Rights Act. Later, the district court held a three-day hearing to consider evidence for adoption of interim maps. All of these events occurred within the four months after the Legislature adjourned.

Unfortunately, the State of Texas has not proceeded with its redistricting obligations expeditiously. Final census data was available to the state in February.

[5] For a list of the election deadlines that incorporates changes made by the district court the Secretary of State has prepared a website. http://www.sos.state.tx.us/elections/laws/2012primary.shtml (accessed November 30, 2011). This list incorporates the changes made by the district court and is fairly comprehensive though some deadlines are omitted.

Despite this, the Texas Legislature did not pass plans for the State House or State Senate until June, the last month of the six-month regularly called session. The State did not adopt a redistricting plan for Congress until several weeks later, in a special called session. Then, the State delayed by several weeks its submissions of these plans for preclearance. When the State did make the submission, it chose to do so through a declaratory judgment action before the United States District Court for the District of Columbia. *See* 42 U.S.C. § 1973(c). As a result of these numerous delays, the D.C. district court was unable to grant preclearance, even if it was inclined to do so, in time to avoid the necessity of the drawing of interim maps by the United States District Court for the Western District of Texas, San Antonio Division.

While considering evidence on interim maps, the San Antonio court gave careful consideration to timing adjustments for this election. After considering evidence and arguments from each of the parties' attorneys, the court entered an unopposed order revising various election deadlines. Appendix Exhibit 6. This order struck a balance between the competing interests of the litigants as they relate to election scheduling. The order pushed back the opening of the filing period from the middle of November to November 28. The closing of the filing period had previously been set at December 12th and under the district court's order, the deadline was pushed back to December 15th. Several other deadlines were similarly adjusted by the court's order in order to accommodate the changes to the filing period. The changes made to the filing period

were structured such that there were minimal disruptions to the election schedule after the close of the filing period.[6]

On the Monday of the interim map hearing (October 31)[7], the district court started its inquiry regarding potential adjustments to the election calendar by hearing from Ann McGeehan, the Texas Secretary of State's Chief of the Election Division.[8] *See* Appendix Exhibit 2. Ms. McGeehan started her presentation by observing that the Legislature had considered what could be the latest date for the close of the filing period in light of the new federal law. *Id*. at 46. Ms. McGeehan further offered that the start of the filing period is somewhat flexible, but the close of the filing period could be adjusted by only a few days in light of the other deadlines and laws. *Id*. at 47. The Secretary of State representative also stated that keeping the December 12th closing of the filing period "would be preferable." *Id*. at 49. Judge Orlando Garcia then inquired of Ms. McGeehan whether it was preferable to move the election deadline for all races on the ballot or only for the offices of state representative, state senator and congress. *Id*. The Secretary of State representative stated, "I think it would preferable just to move everybody and have one standard filing period." *Id*. at 50.

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[6] The filing period in Texas had already been moved up in the calendar by the Texas Legislature in order to comply with Military and Overseas Voters Empowerment Act of 2009, 42 U.S.C. § 1973ff, *et. seq*.

[7] The interim map hearing was held Monday, October 31, 2011. It was recessed November 1, and 2 so that the attorneys could attend the Motion for Summary Judgment hearing held on November 2nd before the United States District Court for the District of Columbia. The San Antonio hearing began again on the 3rd and concluded on the 4th.

[8] Ms. McGeehan has since left her position in the Secretary of State's office since the hearing.

After Ms. McGeehan's presentation, lawyers for the Democratic Party and Republican Party were permitted an opportunity to state their positions on the subject. The undersigned made a presentation for the Democratic Party and stressed the importance of preserving as long a filing period as possible. *Id.* at 50-52. There were a variety of explanations for this position, not the least of which included an opportunity to recruit candidates for the districts as drawn. The undersigned proposed "a hybrid approach" to the filing period wherein the period would be shortened to approximately three weeks and the filing deadline would be pushed back. *Id*. at 52. Conversely, the attorney for the Republican Party of Texas urged the filing period be shortened to two weeks and that the filing period also be closed on December 15th. *Id*. at 55. The Republican Party representative then stressed the urgency of the matter and explained to the court the difficulties facing county election facilities with a shortened and late filing period. *Id*. at 56-57. The Republican Party also stressed that the court should enter an order, if at all possible, by the end of that week so that the new deadlines could be communicated to election officials at an election retreat to be held that Saturday. *Id*. at 58. After considering these points, the court took a recess and upon return continued considering evidence relative to interim maps.

Over the ensuing days, the State, the Secretary of State, and the political parties continued discussions concerning the appropriate compressed election schedule. On the evening of November 3rd, the undersigned counsel submitted to the court a proposed order adjusting election deadlines. Appendix Exhibit 4. This order was developed over

the previous several days after consultation with attorneys for the parties.[9] After the filing of the proposed order and over that evening, various interested parties, including parties not before the court, raised questions, concerns, alterations, and additions to the order.

On the morning of the 4th, the district court brought Ms. McGeehan back because it was troubled by an e-mail it received that the Secretary of State's office had sent to county election officials. The e-mail appeared to have encouraged election officials to continue the process of drawing precinct boundaries under the maps adopted by the Legislature even though those plans had not yet been precleared. Appendix Exhibit 3 at 715-16. No doubt the Secretary of State's office encouraged additional work by county election offices because it believed there was an urgent need to be prepared for the upcoming election deadlines.

Later that day, additional discussions occurred before the court concerning election timing because the court had received a fax from an attorney representing Harris County that raised issues concerning election timing. Appendix Exhibit 3 at 772. The court asked the attorneys to consider the issues raised in the letter and make any adjustments to the order proposed by the Texas Democratic Party. *Id* at 773. After a few hours, the undersigned continued to confer with the interested parties, as well as counsel for Harris County. Communications were made with the Secretary of State. *Id*. at 900.

[9] The attorney for the State represented at the hearing that the election schedules should be negotiated between the political parties and agreed to by the Secretary of State's office.

Before the court, and in response to an inquiry from Judge Orlando Garcia, the undersigned represented a new proposed order to be submitted later that afternoon had been, to use Judge Garcia's term, "signed off" on by the parties to the litigation. *Id*. at 901. None of the lawyers for any of the parties, including the State and the Republican Party of Texas stood up to correct that statement. *Id*. Indeed, the order was prepared as a result of a collaborative effort. Later that afternoon, the Texas Democratic Party submitted the final, revised election schedule order which shortly thereafter was signed by the court. Appendix Exhibit 5.[10]

The district court, after carefully considering the issues, struck the appropriate balance between providing the judiciary sufficient time to consider the matter while also leaving as undisturbed as possible the impending election deadlines. Now, the State asks for those deadlines entered by the district court, and unopposed by the parties at the time, to be ignored.[11] Instead, the State would have this Court impose an entirely new, untested and insufficiently described election schedule. The State makes such a request without presenting sufficient evidence to support its bald assertion that additional election delays can be made with "minimal disruption" of the State's elections. The Court should avoid resolving such complicated factual issues that relate to numerous factors affecting the State's election schedule. In the event the Court decides to consider these complicated issues, the Texas Democratic Party offers evidence, included in the

[10] The following Monday, the district court entered a new election schedule order to correct a typographical error relating to one of the dates. Appendix Exhibit 6.

[11] The state has not included the election schedule order in its Notice of Appeal filed and once amended.

Appendix, that raises some of the numerous issues that will ensue should the election schedule be altered further.

The State makes two proposals to the Court in dealing with the election schedule in its effort to obtain emergency, plenary review of the interim maps. First, the State requests "an immediate remand order from this Court, accompanied by instructions requiring the three-judge court to act expeditiously." House Application at 24. The State makes no further explanation as to how this could be possible other than to assert that such an order "could allow the Texas House primary elections to go forward as planned." *Id*. Second, the State proposes that the primary election dates, as adopted by the Legislature and district court with careful deliberations, should be simply ignored and that instead the primary should be rescheduled for a date in May, when the State had earlier scheduled runoff primary elections. *Id*. The State goes on to propose that the regular primary election in March would go forward with respect to all races other than Texas House, Texas Senate and Congress. *Id*. at 25. As a consequence, Texas voters would be required to appear at polling locations for two 2012 primary elections.[12] The State does little to flush out the details of its never before attempted election scheme and makes no explanation as to who would cover the considerable expense borne by cities, counties, local governments, county political parties, state political parties, and the State itself for instituting such a system. Furthermore, the State does not explain what

[12] The state is not clear as to whether there would also be two run-off elections or whether the run-off elections would be consolidated in a single election in late June or early July.

considerable steps it would undertake to avoid massive voter confusion — the foreseeable consequence of such a bifurcated election schedule.

In reality, the State makes its "Hail Mary" election schedule request because it recognizes under the current schedule there is not sufficient time for the Court to disturb the district court's reasoned opinions and orders.[13]

In the last few days, the Texas Democratic Party, its staff, and various election officers around the state have carefully considered the ramifications of the order sought by the State. Appendix Exhibit 1. It is impossible to determine at this point all of the effects an order as requested by the State would cause. The following are some of the more serious effects:

1. Performing an election under the current maps for only local offices and for President of the United States would presumably employ the election voting precincts in place today. It would be impossible to draw new such voting precincts based upon the enacted redistricting scheme because the parties would not know until this Court issued its order as to the makeup of those plans. Thus, voters would vote during the Presidential Primary and local primary held in March in one voting precinct. Once the legislative districts were in place, new voting precincts would be drawn and thousands of voters would have to be issued new voter registration cards indicating their new voting precinct. These voters would then be expected to appear for another election in all likelihood at a different polling location than where they had voted only a few months prior. Even if

[13] The Texas Democratic Party denies that the State would be entitled to any relief upon plenary review, but nevertheless leaves briefing on that issue to the other parties.

this could be accomplished administratively, it would be expensive and it would cause enormous voter confusion.

2. Rent, office expenses, and equipment rental for the election and conventions activities would increase because in many cases these agreements cannot now be rescinded. These agreements would have to be extended to accommodate an additional election and a much longer election schedule. All units of each political party and each election jurisdiction would pay these higher costs.

3. The county, senate district, and state political party conventions would have to be moved. They are presently scheduled to occur in or around June. Because the runoff elections would not be completed until this time, the conventions would have to move back such that the political parties could finalize their nominees at convention. Pushing back of the political party convention schedule is limited because the Democratic National Committee holds its national convention during the week of September 3, 2012 and the Republican National Committee holds its convention during the week of August 27, 2012.

4. Texas does not register its voters by political party. Instead, membership in a political party is determined by participation in the general primary election that year. *See* TEX. ELEC. CODE § 162.003. There is no provision under state law for determining whether a voter who voted in one party's primary in the first primary election would be permitted to vote in another party's primary in the second primary election. There will be numerous voters who show up and attempt to vote, some undoubtedly successfully, in the

opposing party's primary in the second election. Numerous issues will be raised and subsequent election contests concerning whether these votes are tabulated will ensue.

5. Both major state political parties in Texas allocate their national convention delegates based on a proportionate share of the primary votes won by the Presidential candidates in districts. The Republican Party of Texas uses congressional districts and the Texas Democratic Party uses state senate districts. Although, under the State's proposal, Presidential voting would still occur in March, it would be impossible to determine who won what number of delegates since the political parties would not know the data broken down by state senate and congressional districts because such districts would not yet exist. What is worse, after the districts are in place, in the likely event voting precincts were changed, it would be impossible to determine who won how many delegates because election data is kept by voting precinct number. Once the voting precincts were split, no sufficient election data would be available from the March election to re-aggregate in order to determine the allocation of delegates.

6. Movement of the political parties' conventions would be expensive. These conventions are booked a year or more in advance and involve extensive contracts with hotels and convention spaces. In many cases, the facilities in Texas that are capable of accommodating such large crowds will already be booked on later dates. Even if a facility could be arranged on a later date, the political parties would incur substantial expenses in moving the venue and date.

7. With regard to federal races, deadlines are in place promulgated by the Federal Election Commission related to reporting of campaign finance information. With regard to state races, the Texas Election Code prescribes deadlines and rules for reporting to the Texas Ethics Commission regarding campaign finance information. These deadlines would have to be adjusted to accommodate the hybrid voting schedule.

8. In order for there to be any success in implementing the hybrid election schedule, millions of dollars would have to be spent in order to inform the vast population of Texas of the new schedule, procedures and changes in voting precincts.

9. It is not at all clear that election equipment is available to undertake these additional and delayed elections. Municipalities are already having trouble locating sufficient election equipment and election locations to accommodate the May runoff. Election equipment is often used by other jurisdictions when not in use in Texas. It would be an enormous task for all 254 counties and other election jurisdictions to obtain and secure election equipment.

10. The standard runoff election as already prepared for by election officials would not typically be a high turnout election considering there would normally only be a small sample of the contested races left to be put to the voters. On the other hand, having legislative elections also on the runoff date would drastically increase the turnout and therefore the number of polling locations and election equipment required. None of this has been arranged to date and it is not at all clear that it could be arranged.

11. Each of the political parties in Texas will have to retain staff and equipment and as well as produce thousands of pages of additional election materials to accommodate a longer election schedule and an additional primary election. Such additional, considerable expenditures have not been budgeted for by the Texas Democratic Party and are not included in the State's appropriations bill for election activities this biennium.

12. On the other hand, and perhaps the reason the State does not propose it, moving back the Presidential Primary virtually guarantees Texas voters have no meaningful vote in selection of presidential nominees. Though it is unlikely that President Barack Obama will be seriously challenged for the Democratic Party nomination, it is apparent that the contest for the Republican nomination is robust. It is conceivable, if not likely, that Texas with its current primary vote date could have a meaningful contribution in the Republican primary selection process. Though the Texas Democratic Party has little direct benefit in preserving that opportunity for Texas Republicans, contested and vigorous primary elections for President of the United States benefit both parties. Last Presidential election cycle, Texas played a central role in the contest between President Obama and Secretary of State Hillary Clinton. As a result, there was a substantial increase in voter registration throughout the state which was enjoyed by both parties. Both parties enjoyed a considerable bump in fundraising and the overall excitement of the election contributed to both political parties get out to vote efforts in the general election. Additionally, the flood of new voters in the Presidential

contest provided both political parties substantial and extensive election data for future voter contact initiatives.

In summary, though not exhaustive, the problems identified above, and un-rebutted by evidence from the state, weigh heavily against a stay.

ARGUMENT

Entitlement to an emergency stay can be shown in only the most extraordinary of circumstances. Justice Brennan described the factors for the court to weigh when considering a stay application request:

> Relief from a single Justice is appropriate only in those extraordinary cases where the applicant is able to rebut the presumption that the decisions below — both on the merits and on the proper interim disposition of the case — are correct … in a case like the present one, this can accomplished only if a four-part showing is made. First, it must be established that there is a "reasonable probability" that four Justices will consider the issues sufficiently meritorious to grant certiorari or to note probable jurisdiction … Second, the applicant must persuade [the Circuit Justice] that there is a fair prospect that a majority of the court will conclude the decision below is erroneous … Third, there must be a demonstration that irreparable harm is likely to result from the denial of the stay … and Fourth, in a close case it may be appropriate to "balance the equities" — to explore the relative harms to applicant and respondent as well as the interest of the public at large.

Rostker v. Goldberg, 448 U.S. 1306, 1308 (1980) (Brennan, J.). Even if the Applicant demonstrates irreparable injury, not attributable to its own behavior, that harm must be balanced against the injury to other parties to the case or to the public at large. *See Times-Pacayune Publ'g. Corp. v. Schulingkamp*, 419 U.S. 1301, 1305 (1974). *See also, Barnes v. E-Systems, Inc.*, 501 U.S. 1301, 1304-05 (1991) (Scalia, J.). Justice Marshall

has said that a Circuit Justice should be "'bound to the equities…and determine on which side the risk of irreparable injury falls the most heavily.'" *Holtzman v. Schlesinger*, 414 U.S. 1304, 1308-09 (1973).

A. Balancing of harm weighs heavily against a stay.

The State has failed to show any evidence it would suffer a peculiar harm by the Court failing to enter a stay. The real parties in interest in this case are the citizens of Texas. The substantial evidence considered by the district court over approximately three weeks was directed at precisely the issues of fairness to the Texas voter. The central question in this case is whether Texas citizens will have a legitimate opportunity to elect the candidates of their choice or whether, in at least some races, incumbents to the state legislature will direct the outcomes they desire. Though it is true that the Legislature is entitled to deference on redistricting matters, when it fails to perform those duties in compliance with the Voting Rights Act and the Equal Protection Clause, federal courts are faced with the "unwelcome obligation" to craft interim plans. The district court, being in the best position to consider such weighty factual issues, crafted the interim plans that can now be easily implemented under the current election timetable.[14] When the balance of equities is "highly factual" in nature, the balance reached by the district

[14] Is there any doubt that the State would oppose any judicial effort to alter the election timetable if redistricting plans it adopted were being implemented? Should the Court enter a stay in this case, Plaintiffs pursuing voting rights and equal protection challenges to redistricting plans in the future will similarly seek adjustment of entire election schedules by lower courts, and subsequently this Court, so that their legal challenges may be timely heard.

court below will weigh heavily and perhaps decisively. *Block v. Northside Lumber Co.*, 473 U.S. 1307 (1985) (Rehnquist, J.).

B. The Court should deny the stay because the State failed to act expeditiously.

The Court has determined on a number of occasions that an applicant dilatory in its actions is not entitled to a stay. *See Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1318 (1983) (Blackmun, J.) (failure to act with greater dispatch tend[ed] to blunt his claim of urgency in counsel[ed] against the grant of a stay."). *See also Beame v. Friends of the Earth*, 434 U.S. 1310, 1313 (1977) (finding that delay in applying for a stay "vitiate[ed] much of the force of their allegations irreparable harm"; *Westermann v. Nelson*, 409 U.S. 1236 (1972) (Douglas, J.) (too late to reprint challenged ballots in an imminent election); *O'Brien v. Skinner*, 409 U.S. 1240 (1972) (Marshall, J.) (demand for absentee ballots for an election to be held four days after filing of application for a stay); *Montgomery v. Jefferson*, 468 U.S. 1313, 1314 (1984) (Marshall, J.) (application filed at 3:30 p.m. to place names on the ballot in an election to be held the next day). *See also Republican Party of Haw. v. Mink*, 474 U.S. 1301 (1985) (Rehnquist, J.).

C. The Court should deny the stay because it would harm the public interest.

The final consideration in deciding whether to grant a stay is whether the stay would be in the public interest. *Winter v. Natural Resources Defense Counsel*, 555 U.S. 7, 20 (2008). This public interest determination requires considering the broad impact of the injunction requested, because equity demands courts "pay particular regard to the public consequences in employing the extraordinary remedy of injunction." *Weinberger*

v. Romero-Barcelo, 456 U.S. 305, 312 (1982); *accord, Winter*, 555 U.S. at 24. When a stay would adversely affect public interests in a way that cannot be compensated by a bond, the court should refuse to grant such relief even though "the postponement may be burdensome to the plaintiff." *Yakus v. United States*, 321 U.S. 414, 440-41 (1944).

In an election context, the decision to grant an injunction should take into consideration the proximity of the forthcoming election and the mechanics and complexities of state election laws. *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). The nature of the Court's jurisdiction means it has not had many occasions to address a stay is in the public interest, but courts that have considered the question as it relates to elections generally, and redistricting specifically, have found many different considerations compelling, including:

— having elections conducted in constitutionally-drawn districts, *Johnson v. Miller*, 929 F.Supp. 1529 (S.D. Ga. 1996);

— preventing disruptions of the electoral process caused by redrawing lines after registration has begun and the election has been set, *Dean v. Leake*, 550 F.Supp. 594, 605-06 (E.D.N.C.), *app. dis'd*, 555 U.S. 801 (2008);

— candidates' reliance on existing laws or boundary lines as they are then drawn, *Respect Maine PAC v. McKee*, 622 F.3d 13, 16 (1st Cir. 2010); *Dean*, 550 F.Supp.2d at 605-06;

— preventing the violation of the constitutional rights of voters, *Spencer v. Blackwell*, 347 F.Supp.2d 528, 538 (S.D. Ohio 2004); *McClure v. Manchin*, 301 F.Supp.2d 564, 575 (N.D. W.Va. 2003);

— having an orderly election and the smooth administration of election laws, *United States Students Ass'n Fnd. v. Land*, 546 F.2d 373, 388-89 (6th Cir. 2008); *Summit County Democratic Central & Exec. C'tte v. Blackwell*, 388 F.Supp.2d 547, 551 (6th Cir. 2004);

— following Supreme Court precedent, *Homans v. City of Albuquerque*, 264 F.3d 12400, 1244 (10th Cir. 2001) (per curiam); and (most importantly)

— having "fair and honest elections." *Brown v. Socialist Workers '74 Campaign Ctt'e (Ohio)*, 459 U.S. 87, 107 (1982) (O'Connor, J., concurring).

Weighing these factors and the evidence and issues described herein, the Court should deny the stays requested.

CONCLUSION

For the forgoing reasons, the Texas Democratic Party and Boyd Richie request the Court deny all three Applications for Stay submitted by the State of Texas.

Dated this 1st day of December, 2011.

Respectfully submitted,

By: */s/ Chad W. Dunn*

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CAPACITY AS CHAIRMAN OF THE
TEXAS DEMOCRATIC PARTY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been directed to all counsel of record and/or all interested parties, as listed below, electronic mail and by regular U.S. first class mail on this the 1st day of December, 2011.

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